



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 369 (Substitute S-1 as reported)
Senate Bill 370 (Substitute S-1 as reported)
Sponsor: Senator Wayne Schmidt (S.B. 369)
 Senator Jack Brandenburg (S.B. 370)
Committee: Commerce

Date Completed: 7-21-15

RATIONALE

Under the Use Tax Act and the General Sales Tax Act, the sale or purchase of certain property is eligible for an industrial processing exemption from the tax levied under the respective Acts. The types of property eligible for this exemption under either Act include, for example: a) machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity; b) property that is consumed or destroyed or that loses its identity in an industrial processing activity; and c) fuel or energy used or consumed for an industrial processing activity. Although liquor manufacturers may claim the exemption when they purchase equipment and supplies used to produce alcoholic liquor for wholesale, some people believe that current law is ambiguous as to whether the industrial processing exemption applies to property used to produce liquor sold at a manufacturer's own retail venue. They contend that it should apply and if it does not, the result is double taxation because taxes are levied on the sale of the property used for manufacturing and on the sale of the liquor that is produced. To address those concerns, it has been suggested that the industrial processing exemption should apply explicitly to property used to manufacture alcoholic liquor sold at retail through the manufacturer's own locations.

CONTENT

Senate Bills 369 (S-1) and 370 (S-1) would amend the Use Tax Act and the General Sales Tax Act, respectively, to extend the industrial processing exemption under each Act to tangible personal property used to manufacture alcoholic liquor sold at retail through the manufacturer's own locations.

Currently, the industrial processing exemption under each Act does not apply to tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations. The bills would make an exception to this provision, as described above.

"Alcoholic liquor" and "manufacturer" would be defined as those terms are defined in the Michigan Liquor Control Code. (Under the Code, "alcoholic liquor" means any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of 1% or more of alcohol by volume fit for use for food or beverage purposes as defined and classified by the Liquor Control Commission. "Manufacturer" means a person engaged in the manufacture of alcoholic liquor, including, but not limited to, a distiller, a rectifier, a wine maker, and a brewer.)

The bills are tie-barred to each other.

MCL 205.94o (S.B. 369)
205.54t (S.B. 370)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Liquor manufacturers are generally granted a sales or use tax exemption when they purchase processing equipment or material used to produce liquor for wholesale. It is not clear, however, whether the exemption applies when the property is used to produce liquor sold at retail by the manufacturer through its own location. This ambiguity evidently has caused problems for some manufacturers, such as wine makers and breweries. The problems include, for example, audits and threats of legal action for taxes owed, the expenditure of a great amount of time and effort to keep books, and double taxation, with collections imposed both on the machinery and supplies used to manufacture the liquor and on the liquor. The consequence is that many alcohol manufacturing businesses are discouraged from offering on-site tasting rooms or on-site retail sales. The bills would explicitly grant liquor manufacturers the use and sales tax industrial processing exemptions for tangible personal property used to manufacture liquor sold at retail at the manufacturer's venue. The exemptions would eliminate the double taxation, promote growth of Michigan's \$300.0 million liquor manufacturing industry, and give alcohol manufacturing businesses clear guidance on how much tax is owed.

Opposing Argument

The bills would have a negative effect on sales and use tax revenue, and would reduce available money for the School Aid Fund. While the impact of these bills would likely be minimal, when aggregated with other recently passed bills, revenue to the School Aid Fund would be affected significantly. If these exemptions are enacted, then the School Aid Fund should be held harmless by the cuts.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills would reduce both General Fund and School Aid Fund (SAF) revenue by an unknown and likely negligible amount. According to the 2012 Economic census, distilleries in Michigan made \$168,000 in capital expenditures while wineries spent \$2.7 million and breweries spent \$16.6 million. The proportion of these expenditures that would be affected by the bills is unknown, but if 20% were affected and the estimate were representative of the average annual capital expenditure, the bills would reduce General Fund revenue by approximately \$156,000 and SAF revenue by approximately \$78,000 per year.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.